<u>REMARKS</u>

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-20 are currently pending. Claims 1, 8 and 15-19 have been amended by the present amendment. No new matter has been added.

In the outstanding Office Action, Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,818,603 to <u>Motoyama</u> (hereinafter "the '603 patent") in view of U.S. Patent No. 5,864,559 to <u>Jou et al.</u> (hereinafter "the '559 patent").

Amended Claim 1 is directed to a computer program product, comprising: a computer storage medium and a computer program code mechanism embedded in the computer storage medium for causing at least one of a device, an appliance, an application, and an application unit to control a protocol used for data communication to a remote receiver from the at least one of a device, an appliance, an application, and an application unit, the computer code mechanism comprising: (1) a first code device configured to provide plural communications protocols capable of providing data transfer <u>at an application layer;</u> (2) a second computer code device configured to select a first protocol of the plural communications protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (3) a third computer code device configured to select a second protocol of the plural communications protocol to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (4) a fourth computer code device configured to collect events at the at least one of a device, an appliance, an application, and an application unit; (5) a fifth computer code device configured to attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the first protocol; and (6) a sixth computer code device configured to attempt to transfer the collected events to the

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remote receiver from the at least one of a device, an appliance, an application, and an

application unit using the second protocol after attempting to transfer the collected events to

the remote receiver from the at least one of a device, an appliance, an application, and an

application unit using the first protocol, <u>automatically without human intervention.</u> The

changes to Claim 1 are supported by the originally filed specification and do not add new

matter.[1]

Regarding the rejection of Claim 1 under 35 U.S.C. § 103, the Office Action asserts

that the '603 patent discloses everything in Claim 1 with the exception of the fifth and sixth

computer code devices recited in Claim 1, and relies on the '559 patent to remedy those

deficiencies.

The '603 patent is directed to a method and system for controlling and

communicating with machines using multiple communication formats. The '603 patent

discloses that after information is transmitted from a first device to a second device, the

second device determines the communication protocol utilized by the first device by looking

up an identifier contained within the information received to determine a <u>format</u> of a header

of the transmission, parses the header of the transmission using the format of the header

which was determined, and <u>determines a communication protocol</u> using information in the

header which is parsed using the format of the header. Thus, the '603 patent discloses a

method that is performed at the <u>receiving device.</u> However, as admitted in the Office Action,

the '603 patent fails to disclose the fifth compute code device and the sixth computer code

device recited in Claim 1. In particular, Applicant respectfully submits that the'603 patent

fails to disclose the use of the first and second protocols recited in amended Claim 1, wherein

the first and second communication protocols are capable of providing data transfer <u>at an</u>

<u>application layer,</u> as recited in amended Claim 1.

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[1] See, e.g., paragraphs 46-47 in the specification.

The '559 patent is directed to an ISDN modem capable of self-configuring itself to use one of a variety of preprogrammed ISDN protocols. As shown in Figure 2, the '559 patent discloses a method of setting up an ISDN modem, wherein the "National ISDN" protocol is first tried to see if the modem is operating properly with that protocol. If the modem is not working properly and the maximum time limit has been reached, the "AT&T ESS" protocol is tried. Further, the '559 patent discloses that if one of the protocols is successful, the results are presented to the <u>user</u> at steps 212 and 213. Further, the'559 patent discloses that if the user approves, the set-up continues in the conventional manner, otherwise the user is prompted to manually enter an ISDN protocol.[2] Thus, Applicants note that the'559 patent discloses an ISDN modem set up procedure involving a search for an ISDN protocol that works with the ISDN modem such that the <u>user</u> must approve the selected protocol. However, Applicants respectfully submit that the '559 patent fails to disclose the use of first and second communication protocols capable of providing data transfer <u>at an application layer,</u> a recited in amended Claim 1. Moreover, Applicants respectfully submit that the '559 patent fails to disclose the sixth computer code device configured to attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second protocol <u>automatically without human intervention,</u> as recited in amended Claim 1. Moreover, Applicant respectfully submits that the '559 patent does not disclose that the <u>collected events</u> of the at least one of the device, an appliance, an application, and an application unit are attempted to be transferred to the remote receiver from the at least one of the device, an appliance, an application, and an application unit, as recited in Claim 1. Rather, the '559 patent merely discloses a set-up procedure in which different ISDN protocols are tried.

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[2] See '559 patent, col. 4, lines 20-33.

Thus, no matter how the teachings of the '603 and '559 patents are combined, the combination does not teach or suggest the fifth and sixth computer code devices recited in Claim 1, wherein the first and second protocols are capable of providing data transfer at an application layer. Accordingly, Applicant respectfully submits that the rejection of Claim 1 (and dependent Claims 2-7) is rendered moot by the present amendment to Claim 1.

Claim 18 recites limitations analogous to the limitations recited in Claim 1. Moreover, Claim 18 has been amended in a manner analogous to the amendment to Claim 1. Accordingly, for the reasons stated above for the patentability of Claim 1, Applicant respectfully submits that the rejection of Claim 18 is rendered moot by the present amendment to that claim.
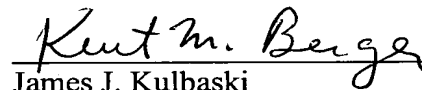
Independent Claims 8 and 19 recite limitations analogous to the limitations recited in Claim 1. However, Applicant notes that Claim 8 recites a fifth computer code device configured to attempt to transfer collected events to a remote receiver from at least one of a device, an appliance, an application, and an application unit using a first format; and a sixth computer code device configured to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second format after attempting to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the first format automatically without human intervention. Applicant respectfully submits that the combined teachings of the '603 and '559 patents fail to disclose the fifth and sixth computer code devices recited in Claim 8. In particular, Applicant notes that the '559 patent is directed to the use of multiple ISDN protocols, not plural communication formats, as recited in Claim 8. Accordingly, Applicants respectfully submit that the rejections of Claim 8 (and dependent Claims 9-17) and Claim 19 (and dependent Claim 20) are rendered moot by the present amendment to Claims 8 and 19.

Thus, it is respectfully submitted that independent Claims 1, 8, 13, 18, and 19 (and all associated dependent claims) patentably define over any proper combination of the '603 and '559 patents.

Consequently, in view of the present amendment and in light of the above discussion, the outstanding grounds for rejection are believed to have been overcome. The application as amended herewith is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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